

Approved as Amended: July 28, 2004

**CITY OF MORGAN HILL
CITY COUNCIL SPECIAL MEETING
MINUTES – JULY 14, 2004**

CALL TO ORDER

Mayor Kennedy called the special meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Present: Council Members Carr, Chang, Sellers, Tate and Mayor Kennedy

DECLARATION OF POSTING OF AGENDA

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council Action

CLOSED SESSIONS:

Mayor Kennedy announced the below listed closed session items.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Legal Authority:	Government Code Sections 54956.9(b) & (c)
Number of Potential Cases:	2

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor Kennedy adjourned the meeting to Closed Session at 6:02 p.m.

RECONVENE

Mayor Kennedy reconvened the meeting at 7:45 p.m.

OTHER BUSINESS:

1. **COUNCIL SUBCOMMITTEE REPORT ON THE RESULTS OF THE INVESTIGATION INTO THE SURVEILLANCE OF THE CITY MANAGER** (Continued from 7/7/04).

Mayor Kennedy stated that since last week's Council meeting, he has received many e-mails, phone calls, and in person questions/comments about the subcommittee's investigation on the surveillance of City Manager Tewes. He said that several important points need to be made. He stated that the City

Council and Mayor are elected to conduct the City's business and to ensure that basic services are provided such as police protection, fire/medical emergency response, water, sewer, street, traffic control, and administration. He indicated that the Council hires two city employees directly: the City Manager and the City Attorney. He said that it is the Council's responsibility to ensure that they and all City employees are provided with a safe and healthy work environment, free from harassment. When a City employee, in this case the City Manager, raises a concern about actions that threaten his safety and well being, it is the Council's responsibility to act. He stated that the Council could not ignore his plea for help. Therefore, the Council appointed a subcommittee of Council Members Carr and Sellers to initiate an investigation on the surveillance of Mr. Tewes. He indicated that this was not about politics, religion, or race; it is about ensuring that City employees have a working environment that is healthy, safe and free from harassment or intimidation. Thus, the reason the subcommittee was tasked to conduct the investigation.

Mayor Kennedy indicated that the Council just came from closed session. Before getting into the subcommittee's report, he reported that with respect to the Council Member Chang issue, no further action will be taken on this matter. It was his belief that Council Member Chang would be making a statement.

Council Member Chang stated that she knew about Mr. Tichinin's plan to place City Manager Tewes under surveillance before the plan was carried out. She knew that placing City Manager Tewes under surveillance was improper. She said that she tried to talk Mr. Tichinin out of moving forward with his plan. Obviously, she was unsuccessful. She stated that when she learned that the surveillance plan had been carried, she should have immediately shared with City Manager Tewes and the City Council what she knew about Mr. Tichinin's responsibility for the surveillance. She did not do so because it was her honest belief that the attorney-client privilege prevented her from doing so. Therefore, she stood silent while the City Council hired a private investigator to find out who was behind the surveillance and that she concurred that an investigator should be hired. She stated that she misled her colleagues on the City Council about what she knew concerning the surveillance. She now apologizes to her colleagues for this. She indicated that she is deeply committed to this City and that she does not approve of Mr. Tichinin's action or the action of anyone else who chooses to pursue their business with the City as pure sabotage. She stated that she is deeply sorry for the expense the event has cost the City taxpayers. She is also sorry for the disturbance and discomfort that this has caused the City Manager. She apologized to the individuals involved about the entire event. She stated that she did not cause the event but that she had knowledge about the event. She said that it has caused heartburn, time, expense and harmed individual's good names. It was her hope that after tonight, everyone can still work together, placing this matter behind, and still be able to take care of City business.

Mayor Kennedy stated that the Council has a supplemental report from the subcommittee. He indicated that the Council received a 32 page written submission/response made on Mr. Tichinin's behalf. He noted that the 32 page submission does not contradict any of the information that the Council has been provided thus far. Instead of denying the information and inferences set forth in the subcommittee's first report, the Tichinin submission mainly makes legal arguments that the Council should not take any action against him. He noted that to date, the subcommittee has not received any evidence that City Manager Tewes and City Attorney Leichter have had a sexual relationship or any relationship that has adversely affected the performance of their duties. He noted that a request was made at the last Council meeting that campaign contributions be made public. He indicated that the reports have been produced

and have been filed with the City Clerk. If anyone would like to look at the reports, they are available upon request. He said that the above is the bulk of the new information contained in the supplemental subcommittee report.

Stephen Fink, representing Mr. Tichinin, expressed sorrow to see everyone here in this battle. He referred to his letter dated July 13, 2004 addressed to Mr. Wolfe. He inquired whether Mayor Kennedy has seen this letter and requested that this letter be entered into the record.

Marguerite Leoni, special counsel, indicated that the letter dated July 13, 2004 addressed to Mr. Wolfe has been received by the Council and that it will be made a part of the record.

Mr. Fink inquired whether his 30 page letter dated July 12, 2004, has been received and whether it will be entered into the record.

Ms. Leoni stated that the July 12, 2004 letter has also been received by the City Council.

Mr. Fink stated that he received the report/indictment of the City Council's subcommittee on Friday, July 2, advising his client that he had to respond in writing by July 6. He noted that on July 6 his office was closed. He indicated that the subcommittee's report went out to the public on July 2. He felt that Mr. Tichinin should have been given access to the document beforehand. He noted that his letter of July 13, 2004 states that the procedure used by the Council violates due process principals set forth in *Nightlife Partners versus City of Beverly Hills*. In this case, the judge, the jury and the prosecutor were all one entity. He did not know the scope of the inquiry. It was his belief that at first it was an accusation in the report ranging from anything; including that Ms. Leichter was told the truth by Mr. Tichinin. Therefore, he should be reported to the bar, the matter sent to the district attorney, that he be condemned and/or removed from a committee, etc. He stated that he then received an e-mail from Mr. Wolfe stating that he misapprehended the nature of the action and that the matter just concerned whether or not City Manager Tewes was surveiled and whether or not Mr. Tichinin lied to Mayor Pro Tempore Sellers. He said that when he prepared the July 12 submission, he did not have time to go over all of the factual allegations in the report. It was his understanding that the Council had four months to conduct the investigation and prepare the report. He did not believe that anything has been done that was wrong. He said that he will assume that everything in the report has been placed on the table and that Mr. Tichinin's greatest sin was that he hired a private investigator. The Council contemplated litigation because Mr. Tichinin did not tell the truth to Council Member Sellers. He said that Mr. Tichinin threatened the Council/City with a lawsuit. He referred to Article 1, section 1 of the Constitution of the United State and Article 1, Section 3 of the State of California's constitution. He indicated that both give an individual a right of petition and free speech.

Mr. Fink said that whether or not it is unpleasant to investigate City Manager Tewes, no law was broken. He referred to the State of California, Code of Civil Procedures, Section 128.7 that states "do your homework." In order to do your homework, you hire an investigator. He stated that the proposition, set forth in detail in his document, is one that lawyers do, are supposed to do, and that it is the profession. He indicated that Mr. Bell is a licensed private investigator who was in charge of the investigation. He informed the Council that he has not been given sufficient time to dispute the items. He said that lawyers are supposed to uncover/look into the facts. It was his belief that the Council wants to punish Mr. Tichinin for looking into the facts. If the Council wants to punish Mr. Tichinin for what he

stated to Council Member Sellers, that is one thing, but felt that the rest of the activities were constitutionally protected. He stated that it is illegal for the City to undertake these proceedings. He reiterated that it is not illegal to investigate for a case because it is required. He noted that everyone seems to be of the opinion that it is a matter of public concern that the City Manager and City Attorney are having a sexual relationship. He said that he heard Mr. Tichinin's ex-wife, a superior court judge, opine on this and that it was his belief that she was wrong. He also heard from his old friend from Berkeley who wrote a column in the local paper, Mr. Tichinin's ex partner, Mr. Mitchell, opine on this matter as well and felt that he was wrong as well. The law states that whether or not such a relationship takes place, creates a potential conflict of interest. He referred to the Business and Profession Code section, the State Bar, the Ninth Circuit, Tenth Circuit, and the other cases he has cited in his brief.

Mr. Fink felt that this was in the nature of a quasi judicial proceeding in that the Council intends to punish Mr. Tichinin by taking away a particular benefit as a volunteer serving on a committee. He requested that he be presented with evidence and documents. He said that he has been informed that this information will be presented a couple of days following this hearing. He felt that the principals set forth are such that you provide an individual with evidence and then try them; not afterwards. He said that he has heard a lot about the nature of this investigation. He indicated that he spoke to Mr. Carey and that he did not believe that he was the thug that he is being portrayed to be in the report. Mr. Carey has stated that the things listed in the report did not occur, taking umbrage at the fact that he has been called a thug and a few other things as well. According to the report, a terrible investigation takes place for which Mr. Tichinin should be punished. It was his belief that the report submitted by the Council subcommittee is a terrible investigation and that it is full of innuendos, possibilities and guessing; a report submitted to the public. He stated that his client hired an investigator who got caught. The Council made this information public, noting that Mr. Tichinin did not take this information to the public. He requested a hearing before any action is taken. A hearing will afford him the ability to confront witnesses, look at documents, and deal with the rest of the issues. He said that Mr. Tichinin was wrong in what he told Mayor Pro Tempore Sellers but that his actions were not illegal or wrong. He felt that it would be illegal for the Council to punish Mr. Tichinin.

Bruce Tichinin pointed out that the subcommittee report prepared by Council Members Carr and Sellers was intended as the equivalent to an indictment with the suggestion that he be punished. He said that this Council proposes to sit as a bank of judges to the equivalence of an indictment. He stated that the office of prosecutors is entirely separate from the office of judges. He said that the fundamental precepts of fairness called due process of law require this separation in order to give a fair trial to the person accused. By issuing the equivalence of an indictment against him and taking the role of prosecutors against him, Council Members Carr and Sellers have elected the role of prosecutors. He did not deny their right to do so to the extent that it is lawful. However, he felt that the subcommittee and the Council, if it has any continued intention of being fair to him in this matter, should recognize the conflict between the roles that they have already played, which shows that they have already concluded that he should be punished. Now, they plan to sit as judges on the equivalent of the indictment issued against him. He requested that Council Member Carr and Sellers consider this fact if they have any desire to give him the fairness the Constitution guarantees. He indicated that the provisions of due process require that Council Members Carr and Sellers step down from the dais and not act as his judges. It was his belief that the Council was now sitting to make a determination on what to do in response to the subcommittee report. He inquired whether the Council plans to take action on the recommendation or make a decision on

what action to take/not take in response to the recommendations contained in the subcommittee's report. If so, the Council would be sitting as decision makers on the subcommittee report.

Ms. Leoni indicated that it is not her belief that the Mayor is required to be cross examined under the public comment section. However, if the Mayor wishes to direct a question to staff, it would be appropriate to do so. She stated that at this point of the meeting, it is a time for the public to present/address the Council.

Mr. Tichinin inquired whether it was the opinion of special counsel that his due process rights would be preserved if Council Members Carr and Sellers who are suggesting punishment against him, be allowed to sit and determine which punishment should be dished out.

Mayor Kennedy recommended that the Council hear all of Mr. Tichinin's questions and then respond to them.

Mr. Tichinin requested that the record reflect that he requested Council Members Carr and Sellers disqualify themselves. He stated that he was ashamed that he did not tell his long time friend Greg Sellers the truth and has since told him the truth. He was also ashamed that he did not tell it to him as Council Member Sellers was acting in his role on behalf of the Council. He apologized to everyone for this. He was glad that he corrected it quickly, only six days after he made it and before any harm was done. He said that there is no statement anywhere by anyone, no claim to this point, that any harm was suffered by anyone as a result of the misrepresentation. Any claim from this point forward that some was, he felt would suffer from a lack of credibility. He noted that the subcommittee had seven weeks to prepare its report and that he was sure that the subcommittee did its best. He stated that the reason he made the misrepresentation was due to the fact that he was caught. He said that he feared that giving an answer would tend to compromise the confidentiality of the investigation, and the confidentiality of his client. He also feared that if he told the truth that the City would retaliate against him and his client. In response to his acknowledgment that he conducted that surveillance, the subcommittee has issued a report that suggests, without citing any law, that the subcommittee believes he has broken the penal code, that he be criminally prosecuted. The report also suggests that it be recommended that the State Bar take disciplinary action(s) against his license to practice law without suggesting what provision of the rules contained in the professional conducts for attorneys he has violated. The report further suggests that he be removed from his position on the urban limit line/greenbelt committee of the City without making any suggestion that anyone has ever stated that he has performed incompetently in that role. The report also suggests that he be publicly condemned by the body that is the highest legal authority in the City. He felt that his fears of retaliation were justified.

Mr. Tichinin addressed the reason for the surveillance. He indicated that he was both a partner and attorney for the Vierra project; a proposal to place five homes at the base of El Toro before the slope starts which will be completely out of the public's view of the scenic peak. He indicated that he helped to protect El Toro many years ago as the attorney for the lawsuit that prevented development on the scenic portions of the peak. The response of City staff to the application for this project was to find that it was inconsistent with Measure P and should be denied and not processed because of the inconsistency. He stated that the basis cited for the inconsistency claimed that the line on the General Plan map, demarcated between land that is developable as residential and land to be preserved as open space. As drawn on the General Plan map, it showed that the application would perform some development in the

open space zone. He noted that planning staff informed the Council that the line did not accurately drawn on the map. The determination made a long time ago by this Council was such that the demarcation line should be at the 500 foot contour line. The City Planner informed the Council that when staff placed the line on the General Plan, it was unable to do so accurately based on the technology available at the time. The General Plan map showed land in open space that was below the 500 foot contour line. He felt that it was undisputed that if planning staff had accurately rendered the 500 foot contour line called out by the Council on the map, the Vierra project would be perfectly legal and fall within the developable land. He indicated that he filed an appeal of staff's position that the project was inconsistent with Measure P and that development would not occur in the open space. He briefed the question and pointed out all of the authorities that state where there is a difference between the intention of the legislature and what is done to carry out this intention; you follow the intention even if it is inconsistent with something that is literal in the subsequent line such as the map line. Having filed the appeal, he called the City Attorney to ascertain whether she had read his appeal and to ask what her advice would be to the Council when the appeal is scheduled for hearing. He indicated that the City Attorney stated that she would advise the Council that the appeal would be a reasonable position. Not long thereafter, the City Manager called a meeting, inviting Mr. Vierra and he to be present to which he brought the City Attorney and planning staff. He said that at this meeting, it became apparent that the position of the City Manager, City Attorney and staff was going to be in opposition to the project. When the appeal was considered by the Council, the Council turned to the City Attorney for her advice. Instead of stating that his position was reasonable, as she indicated she would do before the City Manager called the meeting, she told the Council that the law prohibits their position, although it seemed to him that the Council was inclined to agree with him. Without this changed advice, it was his belief that the Council would have decided in his favor. Instead, the Council followed the City Attorney's advice and recommended that he and his client obtain a judgment from the superior court that his position was correct before it would grant full approval of the project.

Mr. Tichinin indicated that he tried to determine the source of the switch in the City Attorney's position. He was aware that he had represented Bob Lynch Ford against the City Manager's proposal for a Ford Store in Morgan Hill and that this project was his signature accomplishment to date in his administration. He feared that the City Manager had called the meeting as part of a scheme of retaliation against him for having appeared before the Council in opposition to this project. Thereafter, he exercised his client's right to petition for readdress for grievances by suing to set aside what he conscientiously perceived to be the many violations of law involved in its approval. He knew that it was widely perceived within the community, and had been for some time, that there had been an affair between the City Manager and the City Attorney. He read into the record the following: "As part of the checks and balance between centers of power in the democratic system of government, it is expected that the offices of the City Manager and the City Attorney will advise the City Council and the other departments of City government independently and objectively. If the relationship widely believed to exist did exist, it obviously is one which has the potential to pervasively eliminate this objectivity and independence between these two powerful offices. Such a relationship is a matter of real public concern to the City on all issues which require the advice and counsel of both the City Manager and the City Attorney. Just as most people would not feel comfortable with the appearance of conflicts of interest that would be created if a city manager and a city attorney were married to each other, if they are conducting an affair, the same kind of probable conflicts of interest and destruction of independence would occur. He believed that if he could show you (Council) evidence that this relationship existed, that he would be willing to reconsider whether or not it had been advised independently and objectively

by the City Attorney when he showed that she had changed her advice and that the Council would be willing to grant a rehearing with someone else advising it. Hence, he fulfilled his duty to investigate that possibility. As his attorney has pointed out, he chose a licensed investigator, a former lieutenant of the San Jose Police Department, Mark Bell, a man known to some of the Council members. Mr. Bell, as is legal, subcontracted the job out to Mr. Carey who is currently in the process of fulfilling the requirement to take a private license investigator test while obtaining 6,000 hours of experience in investigation.”

Mr. Tichinin referred to the false account of the meeting contained in the subcommittee report. He noted that the subcommittee refers to a meeting between the City Manager, the City Attorney, Mr. Vierra and himself. Mr. Vierra set up the meeting with the City Attorney and that he asked for her sole presence at the meeting because it only involved a legal question. On her initiative, she brought the City Manager. At the meeting Mr. Vierra pointed out that the City Council had set the demarcation line between the open space and developable land at the base of El Toro at 500 feet. Following fully noticed public hearings, with the opportunity for all interested parties to give their input; the Council made its decision and said that it would be the 500 foot contour line. He pointed out that it was undisputed because the City planner had said that this was the case. The line was thereafter inaccurately placed on the General Plan map. He pointed out that it was that inaccurate placement that was the basis for the denial of the project as recommended by the City Attorney. Mr. Vierra did not ask “what would take to get you on my side.” He inquired as to the impediments to correcting the mistake. He suggested that that another hearing be held with all of the required public notices being given to consider whether or not the line, now that it is possible to technically draw the line accurately, should be placed where the Council always intended it to be. He indicated that neither he nor Mr. Vierra received a positive response to this question. At this point, he stated that it was his belief that the reason that the City Attorney recommended that the mistaken line be given the force of law was a part of the retaliation that the City Manager is trying to work against him for the Bob Lynch Ford matter and felt that this is retaliation for the exercise of constitutional rights. He felt that this is a violation of the federal civil rights act 42 USC, Section 1983. He indicated that the City Attorney immediately inquired whether he was threatening a retaliation suit. Mr. Vierra stated that he did not want to proceed with a suit; he just wanted the mistake to be corrected.

Mr. Tichinin stated that he would rely on what his attorney has submitted in his letter and what he stated this evening as being the balance of his presentation. He stated that he has a position on the recommendation that he be removed from the urban limit line/greenbelt committee. He said that the distraction of this matter has prevented him from presenting to the landowners, who are interested, and the greenbelt committee an original idea of preserving open space in Morgan Hill. It was his belief that his idea will thoroughly compensate all land owners for such rights that they give in preserving open space. It will preserve the open space in perpetuity rather than just as long as there is a green city council and will do so at no or minimal burden to the taxpayers. It was his hope that the Council would not further cripple his ability to present this proposal by removing him from the committee. He noted that no one has suggested that he has performed incompetently on this committee.

Mayor Kennedy opened the floor to public comment.

Barbara Sullivan stated that as someone who has had the opportunity to deal with all of the major players in this matter, she felt that it was the responsibility of any public entity, including the City to protect its employees. When a public servant is followed, harassed, or intimidated in the course of doing

business, the City has a morale obligation to spend the money that it takes to proactively deal with the issue. She noted that the final report appears to be a fair representation of the situation. As distasteful as this job was, she felt that Council Members Carr and Sellers were thorough and unbiased in their investigation and report. She applauded the City of Morgan Hill for spending the citizen's money in this way. She noted that the Morgan Hill Times ran a poll on their website asking whether it was illegal to have a private investigator follow a city official. She did not believe that this was the central question but that it is whether it was ethical to intimidate and coerce public officials to get personal concessions. When dealing with those who work in the public realm like city staff, she maintained that any kind of harassment, intimidation, and blackmail may not always be illegal but that it is certainly unethical. She stated that a reason for resigning from the planning commission was attributable to her own fear and frustration. She noted that citizens and developers were denied rezoning or building permits and would vent their anger at the Planning Commission and staff. As a volunteer, she could quit when it got bad, however, she always felt bad for City staff who had to deal with the harassment from lawyers, developers and residents as a normal course of doing their job. She said that in the end, the whole sordid affair was not about sex, but was about greed of a lawyer and developer. She said that on the scale of public interaction, the minimum requirement is to act legally. Even if actions revealed in this investigation are later deemed to be legal, she felt that they were unethical. In a town this size, she expects everyone to behave ethically. She expects everyone to be polite, less vindictive and more understanding of the constraints that cause us to work together on a solution. She expects individuals to be honest, fair and decent to each other. She indicated that she was threatened with a personal law suit as a Planning Commissioner and that it was her belief that there would be more threats of law suits in the future. She felt that the only hope the City has to redeem itself is to uncover the truth of the situation and loudly proclaim its outrage. Otherwise, citizens will become silent accomplices into the deterioration of public decency.

Alex Kennett thanked the Council for its first action as it was his belief that the City was well served by said action. He felt that the Council arrived at the conclusion that he would have asked. He said that public figures who are elected understand the ramifications of perception as it comes with the territory. He stated that public figures who are hired or appointed do not have the advantage of having to run a campaign and keeping the public's view of what is done in proper perspective. If there is a misconstrued opinion of what has been done, it is paramount to correct it. He stated that he has been hearing about the alleged affair for approximately three years. He said that it should not matter whether there was an affair or not, the subjects did nothing to change the perceptions of others. He understands that the Council is doing what is right for the City and requested that it continues to do so. He stated that he would prefer that the Council arrange some form of mediation that would take into account the big picture of what is truly best for Morgan Hill rather than a decision made too quickly that will be questioned forever and whose ramifications will draw this issue out for months or years, costing the City even more money and the subjects involved even more pain.

Frances Wang, a 25-year Gilroy resident, stated that she was not interested in politics. However, she is in attendance for her long time friend Council Member Chang. It was her strong belief that she was treated unfairly by the investigation. She felt that Council Member Chang is an intelligent, honest, and hard working individual. She felt that Morgan Hill should be proud to have her serving the community.

Susan Phen, Asians for a Better Community Committees, indicated that the Committee is concerned about today's outcome. She requested that the Council treat the Committee fairly and equally.

No further comments were offered.

Ms. Leoni stated that she is the advisor on this particular matter; special counsel to the City Council. She stated that she has examined the legal issues raised and that it was her belief that the Council can proceed. She can advise the Council in closed session if it has additional questions.

Mayor Pro Tempore Sellers said that there were questions made about the “recommendations” contained in the subcommittee report. He indicated that it was his understanding that this was a list of items that the Council should give consideration to. He said that there may be other items that could be added to the list in order to make a complete list as possible. It was his understanding that the items listed are not recommendations.

Ms. Leoni stated that she has read the subcommittee’s report and that the items are presented as options; they are not recommendations and that they are not presented in that fashion.

Council Member Tate clarified that Council Members Carr and Sellers are a subcommittee of the Council, they are acting for the Council and that they reported back every step of the way of what they were doing; how they were preparing the report and what would be included in the report. He said that he not only endorsed and appreciated everything the subcommittee did; he took full responsibility for their work. He requested that citizens give credit to the subcommittee for their hard work and that if there is to be criticism, it was the Council that sanctioned the investigation. He did not believe that it was fair to single out the subcommittee when they were the ones who undertook all of the work, shouldering all of the responsibility, making sure that the entire Council was on board the entire way. He noted that the Mayor made comments early on and that he seconded his comments. He said that harassment of an employee cannot be ignored as it is wrong. He said that the Council/City cannot allow its employees to be harassed. He said that it is his goal to find out the facts. He noted that the City had an employee who was harassed and that the Council wants to protect its employees from this kind of a situation. If it is surveillance or stalking that causes harassment or rumors/innuendoes that are causing this harassment, the Council needs to figure out what the facts are and figure out how to prevent recurrences. He felt that it was a tragedy that the City had to spend this amount of money on the investigation, noting that there are ongoing costs for what is taking place this evening. He said that the Council will have a lot more expenses than the \$50,000 for the investigation. He said that the Council would like to minimize any costs to the City and move as expeditiously as possible and complete the matter at hand. He stated that he does not want to punish anyone as he does not see a point to this. When you start paying lawyers to analyze 32 pages of whether the matter was legal or not, it is not worth pursuing. It was his belief that it is a goal of the Council not to punish individuals or determine the legalities, but to get this matter behind, minimizing expenses while making sure that this does not happen again.

Mayor Kennedy noted that Mr. Fink stated that the private investigator was Mark Bell, a licensed investigator. He inquired as to the relevance of this fact on this issue.

Ms. Leoni responded that the relevance is that the law requires persons authorized to conduct certain activities, such as investigations, to be licensed and be regulated by the California Business and Professions Code. She stated that it is illegal to engage in these activities if you are not licensed. She

said that there is an exception for an attorney. However, in this case, she is aware that Mr. Carey was not licensed and that he is not an attorney. Therefore, as a general matter, she stated that it would be illegal for Mr. Carey to carry out the activities that he did, assuming that he is not licensed and acting independently.

Council Member Carr stated that he is not an attorney, he did not investigate the legality of these issues, and that he did not draft an indictment. He noted that he was asked to step down on this issue, stating that he will not step down on this issue and will carry out his responsibilities as a City Council Member. He stated that this is an important issue to him and that he would continue to carry out this issue. He felt that the Council has been more than fair to all involved in the process. He said that the Council has offered far more respect than has been given to this Council in this process. He stated that he was disappointed that Mr. Tichinin continues to make unsubstantiated claims against the City Manager and the City Attorney without any evidence to support the rumor. He was further disappointed that anyone would stand at the podium and suggests that the victims of a vicious rumor are the ones to be blamed. He indicated that he has known Mr. Tichinin for many years. In his 2000 Council election, Mr. Tichinin donated to his campaign. In his role as a subcommittee member overseeing this investigation on behalf of the City Council, he has taken no joy in the information the subcommittee has uncovered. He said that some individuals may suggest that his involvement is politically motivated, and stated that he rejects this claim. He noted that all five Council members agreed to appoint a subcommittee to oversee the investigation and all five agreed to the members of the subcommittee consisting of him and Mayor Pro Tempore Sellers. It was his hope that the report presented by the subcommittee and the conclusion he will reach this evening concerning Mr. Tichinin's action sends a message that business is not conducted in this manner in Morgan Hill. As a Council Member, beholding the public's trust, he cannot and will not tolerate this type of behavior, even if it is by someone who has supported him. He did not believe that good government can function if individuals are attempting to intimidate or inappropriately influence elected/appointed officials and staff members. It was his belief that it was his responsibility, as a council member, to make sure that anyone who does so, regardless of who they are, who they know, how popular or powerful they may be, are held accountable for their actions. He said that he was sorry to see prominent members of the community act in this way and commit these offenses. He is saddened that this has happened and that these individuals decided to do the wrong thing. However, sometimes people you thought were good do bad things. When they do, it was his belief that they have to pay the consequences.

Council Member Carr offered his sincere apologies to the City Manager and the City Attorney for what has happened to them personally and for the anguish that they and their families have gone through as a result of actions. He felt that these actions were the old style of politics in Morgan Hill. Rumors, innuendoes, backroom deals, and influence peddling are not the way citizens expect to be handled in Morgan Hill. He stated that barbershop rumors do not substitute for open public dialogue and honest policy discussions. He felt that these tactics should be rejected and labeled as unacceptable in Morgan Hill politics. He said that as Council Members, they are stewards of the community's vision and image. Council Members are held accountable for the environment it creates and the conditions in which it leads City government and the community. He noted that many have asked why make the report public. He said that it was made public to once and for all put an end to the awful rumors that have been spread. He felt that the public needs to know who did this in case it happens again. The public will know and have made a judgment on how best to handle the situation. He felt that the Council has to provide the opportunity for the community to develop its own standards. He reiterated that he is not an attorney and

felt that what took place was wrong. He stated that the legalities of the actions are to be decided by others and not the Council.

Mayor Pro Tempore Sellers said that it has been difficult for everyone. The subcommittee did its best to make sure that it was unbiased in its presentation. He stated that it was a goal to provide information/facts to the Council and ultimately to the community. He stated that he would not be stepping down on this item because it is clear to him that he was acting in his role as a council member. As a council member, it is his duty to step up and do the hard work needed, making a determination to be considered this evening. He noted that he asked special counsel about the recommendation. He clarified that the subcommittee stated a list of options. It was the subcommittee's goal that if the Council was to be considering any possible action, everyone in the community and those involved should be given ample opportunity to think about what actions might be taken. He clarified that the subcommittee did not place the list of items to be considered in any order nor state the actions that the Council should take.

Mayor Pro Tempore Sellers noted that it has been clearly stated that all Council members agreed to proceed with the investigation. All Council members concurred and understood that the City would be incurring costs throughout the investigation. He indicated that Council Member Carr and he presented updates to Council Members at every opportunity, even if there was not much to report. There were some weeks where the subcommittee did not believe it would get anywhere with the investigation but still reported to the Council. He stated that all council members knew what the subcommittee was doing, understanding that it had an obligation to its employees to investigate the threat as any other employer would. The Council had an obligation to find out what happened and to take the appropriate action, depending on what the Council found. If the Council failed to investigate and performed its duties as employers, it would have cost the City much more in legal costs. Individuals have questioned why the Council had to bring this mess before the public. Some individuals have stated that the Council should have come forward earlier while others state the Council should not have brought this matter out at all. He said that the Council has relied on legal counsel throughout the process. There were times that the Council could not bring this matter before the public as advised by special counsel. The Council knew it had to bring this matter before the public, as ugly and unattractive as it was. He said that as difficult as it was to bring this matter forward, the Council is obligated to provide the information to the public. To do otherwise would be illegal and a dereliction of duty. It was his belief that every time a public entity attempts to hide its work from the public, it erodes the faith in government and undermines the foundations of democracy. Therefore, the Council was obliged to bring this matter to the community. He felt that by exposing this ugly mess to public scrutiny it would be the best way to take action and place this matter behind, moving forward with the important work of the City Council. He said that he was frustrated and upset that some members of the community have claimed that political motivation has led to some of the Council's activities. If he had been politically motivated, he would not have touched this matter with a ten foot pole. If he was politically motivated, he would have ignored the pleas of the Council's employees and swept this matter under the rug. If politically motivated, why would he have issued a report condemning one of his biggest supporters and a powerful politician as it would make no sense to do so. He said that the only potential fall out for him, politically, is negative. However, he would rather do the right thing and be condemned for it rather than do the politically action and achieve shallow success.

Mayor Pro Tempore Sellers stated that he was disappointed in Mr. Tichinin as a friend and a community leader that he lied to him and that he undertook actions that embarrassed the town that they both care so much about. He indicated that Mr. Tichinin's objections brought to the subcommittee centered on the fact that he did not believe that he did anything illegal. He noted that the report does not state that Mr. Tichinin did anything illegal. Whether anything done was illegal or not was not for the Council to decide. However, it is clear to him that what Mr. Tichinin did was wrong. Spying on City employees to gain advantage for a project and lying to the Council is wrong. If the Council does not object to Mr. Tichinin's action, the Council is also wrong. He noted that Mayor Kennedy requested that each Council Member point out its ties to the individuals named in the report last week. While publicly condemning a friend and ally is difficult, if the Council cannot hold its friends to the highest standards, he did not know how the Council could demand this from anyone else. If the Council allows its friends to do what it knows to be wrong, how can the Council ask anyone else to do what is right?

Mayor Pro Tempore Sellers indicated that he considered Council Member Chang one of the most impressive politicians he has ever met. However, what she has done to this community cannot be minimized. He noted that she had opportunities to come forward and not withhold information. By misleading the Council, she has brought harm to the community. He stated that this has soured the reputation of the community and the Council. He indicated that more often than not they are both allies in the promotion of many of the community's most visionary projects, working closely together and doing great things for the community. He felt that it was important that the Council call each other on things when it is believed that someone has done something that is wrong. He stated that he could not shirk his responsibility as a Council Member because Council Member Chang is an astute politician, has been a political supporter, or because they are allies. If he had done what she had done, he would fully expect to be taken to task by his colleagues for doing so. He agreed with Council Member Chang that she did act wrongly and that it was important for everyone to state so. He stated that he appreciated that she stated her concurrence with the investigation and that there were times where she remained silent, indicating that this was frustrating.

Mayor Pro Tempore Sellers indicated that the Council has been considering a code of conduct/ethics for some period of time. He felt that it was imperative that the Council make this a top priority, that these documents be adopted, and that the Council adhere to the code of ethics/code of conduct once adopted. He indicated that one of the most frustrating things for him was hearing many of the larger news media who have come before the City and made reference to the City as being a "quant little town," a "cute little town", or a "Payton Place," stating: "what do you expect from a small little town like Morgan Hill." He stated that he grew up in this community as did his wife, indicating that they are raising their children here. He said that he expects a lot from this town, expecting citizens to conduct themselves in the highest, moral, and ethical standards. He further expects Morgan Hill to be a shining example for other larger communities. He expects the Council to be worthy of the people who live in this community. It was his belief that the Council has to state clearly for the record that the Council and the community do not condone, support and will not tolerate these kinds of actions.

Mayor Pro Tempore Sellers indicated that the subcommittee has laid out options before the Council, one being a resolution that clearly states the Council's views toward the actions undertaken by Mr. Tichinin. He recommended that the resolution be read into the record and that the Council consider its adoption this evening.

Mayor Kennedy read into the record a resolution of the actions undertaken by Mr. Tichinin; condemning the surveillance, deploring his denial and requesting the immediate resignation of Mr. Tichinin from the Urban Limit Line Subcommittee.

Mayor Pro Tempore Sellers said that most of the resolution speaks directly to the subcommittee report and conclusions provided in the report. He said that it was characterized, in an early presentation, that City Manager Tewes had a signature project. He stated that he finds this statement intriguing because the City Manager serves at the will of the City Council. If there are signature projects, they are signature projects of the City Council. He said that the City Manager performs his duties on the behalf of the City Council and the City of Morgan Hill. He indicated that the subcommittee felt that it was vital that the community and the Council condemn the activities and make it clear to everyone involved that the Council finds them unwarranted, unjustified, and that it deplores the false statements. He requested that Mr. Tichinin consider resigning immediately from the Urban Limit Line subcommittee in light of all his actions.

Council Member Carr said that the importance of taking action on this issue this evening is such that the subcommittee has presented a report to the Council to base its actions upon. He indicated that this is an informational report and that by taking action this evening, it will be the first time the Council will have made a statement about these actions. He noted that it has been suggested that the Council delay its action. He recommended that the Council move forward, taking action this evening in order to begin the process of healing and begin the process of how the City will conduct business in Morgan Hill; letting the world know that the Council conducts business in an open format. These actions are not the way the Council conducts business in Morgan Hill.

Council Member Tate stated that was pleased that Mayor Kennedy read the resolution into the record as it made one reflect on what was heard this evening and gave individuals the opportunity to change its opinion about any one of the findings. He indicated that he was in accord with all the findings having reviewed them.

Action: *On a motion by Council Member Tate, and seconded by Council Member Carr, the City Council unanimously (5-0) **Adopted** Resolution No. 5832, condemning the surveillance activities by Mr. Bruce Tichinin, deploring false statements made by him, and requesting his resignation from the Morgan Hill Urban Limit Line Subcommittee.*

Mayor Pro Tempore Sellers noted that there were a few items raised in the report that the subcommittee believes may warrant further consideration by the subcommittee.

Ms. Leoni stated that the Council has decided to express its extreme outrage of the activities undertaken this evening. However, as the report reflects, there are outstanding items. It was her understanding that one of the options in the report is for the subcommittee to wind up its investigation of particular matters that may lead to the Council believing that additional actions may be necessary.

Mayor Kennedy indicated that one of the options discussed was referring some of these matters to the district attorney. He said that this is something that the Council may want to talk about. He indicated that he spoke with the district attorney yesterday on the matters before the Council. If the Council chooses to refer any issues to him, the district attorney will look into these matters and conduct an initial

investigation, as deemed appropriate. The district attorney would decide whether it merits proceeding further.

Ms. Leoni said that the non action item would be that the subcommittee completes its work.

Council Member Tate said that he would support the subcommittee finishing its work expeditiously. If it is one of those things that incremental progress is being made, if any, and the matter would be dragged out, he would assume dropping the investigation.

Mayor Pro Tempore Sellers said that the subcommittee would continue to make regular reports to the Council and continue to ask the Council as a whole what it believes would be the appropriate actions to take.

Council Member Chang stated that this whole issue has been harmful to the entire community, Council members, City Manager, City Attorney and to the City of Morgan Hill. It was her hope that the individuals in the situation would be able to talk to each other. She understands that everyone believes that Mr. Tichinin did not do the right thing, but felt that he may be willing to talk to the Council. Mr. Tichinin can pay his dues, dropping the entire matter. She said that she is having a hard time sitting hear and listening to the entire matter. It was her hope that the subcommittee could talk to Mr. Tichinin in order to put an end to this issue.

Mayor Kennedy wanted to make sure that the word gets out that the City of Morgan Hill will not tolerate intimidation or creating a hostile work environment for its employees. The actions taking by the Council have been serious actions. He felt that the Council has been as fair as possible.

Ms. Leoni reported that in closed session, the Council reached a resolution of the subcommittee report as to Council Member Chang.

ADJOURNMENT

There being no further business, Mayor Kennedy adjourned the meeting at 9:40 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK